

Response to Restriction Requirement
U.S. Patent Application Serial No. 10/626,229
Office Action Dated: December 19, 2005
Inventor: Reubi, Jean Claude
Attorney Docket No. 46639-57991

PATENT

REMARKS:

Claims 1-36 were presented in the original application. Claims 1-9, 23-25 and 32-36 have been withdrawn without prejudice to Applicants' rights to pursue these Claims in other patent applications.

RESTRICTION

In the Restriction Requirement, the Examiner restricted the pending claims into nine (9) groups of Inventions. In the Restriction Requirement, the Examiner restricted the claims of the application into four groups of invention as follows:

The Restriction Requirement alleges that there are nine (9) different inventions, as follows:

- I. Claims 1, 2, 6, 8, 9, 23, and 34, drawn to a method of detecting and localizing CCK receptor expressing tumors with a peptide formula labeled with a radioactive metal isotope associated with a chelating agent, classified in class 424, subclass 1.69.
- II. Claims 1, 2, 6, 8, 9, 23, and 34, drawn to a method of detecting and localizing CCK receptor expressing tumors with a peptide formula labeled with a radioactive metal isotope that is chelated with a compound of the general formula II, classified in class 424, subclass 1.69.
- III. Claims 1, 2, 6, 8, 9, 23, and 34, drawn to a method of detecting and localizing CCK receptor expressing tumors with a peptide formula labeled with a paramagnetic metal atom associated with a chelating agent, classified in class 424, subclass 9.323.
- IV. Claims 1, 2, 6, 8, 9, 23, and 34, drawn to a method of detecting and localizing CCK receptor expressing tumors with a peptide formula labeled with a paramagnetic metal atom that is chelated with a compound of the general formula II, classified in class 424, subclass 9.323.

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- V. Claims 3, 6, 24, 34 and 36, drawn to a method of detecting and localizing CCK receptor expressing tumors with a peptide formula labeled with a radioactive halogen isotope, classified in class 424, subclass 1.85.
- VI. Claims 3, 6, 24, 34 and 36, drawn to a method for the therapeutic treatment of CCK receptor expressing tumors with a composition comprising a peptide formula labeled with an isotope, classified in class 514, subclass 12.
- VII. Claims 12-14, 25, 27-31, drawn to a labelled peptide and pharmaceutical composition for controlling CCK receptor expressing tumors comprising a peptide formula attached to an isotope or atom with a chelating group, classified in class 530, subclass 300.
- VIII. Claims 12-14, 25, 27-31, drawn to a labelled peptide and pharmaceutical composition for controlling CCK receptor expressing tumors comprising a peptide formula attached to an isotope or atom with a compound of general formula II, classified in class 530, subclass 300.
- IX. Claims 32-33, drawn to a kit for preparing a radiopharmaceutical composition comprising a derivatized peptide formula with an inert pharmaceutically acceptable carrier, classified in class 435, subclass 810.

Applicants hereby elect Group VII, which is drawn to a labelled peptide and pharmaceutical composition for controlling CCK receptor expressing tumors comprising a peptide formula attached to an isotope or atom with a chelating group, classified in class 530, subclass 300. Applicants identify Claims 12-14, 25, and 27-31 as the claims corresponding to this election.

Applicants also hereby elect with traverse SEQ ID NO:21 as per the instructions of the Notice of Non-Compliant Amendment of December 19,2005. Claims containing the non-elected sequences are hereby withdrawn. The Examiner alleges that the sequences in Claims 13, 25 and 30 represent different groups rather than different species. In making this election with traverse,

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Applicants maintain that SEQ ID NO:13, 14, 19, 20, 21, 22, and 23 in fact represent species in as much as they are patentably distinct entities that fall under the generic structure presented in Claim 12 as SEQ ID NO:27. To designate each of the structurally distinct yet related peptide variants shown in SEQ ID NO:13, 14, 19, 20, 21, 22, and 23 as a separate group would require that each of these SEQ ID NO's undergo separate examination even in the event that the generic structure presented in SEQ ID NO:27 is found allowable. Since each of Claims 13, 25 and 30 are dependent upon Claim 12, each of Claims 13, 25 and 30 by definition incorporate all of the limitations of Claim 12. Consequently, upon allowance of Claim 12, which is directed to the generic structure represented by SEQ ID NO:27, Applicants should be entitled to the consideration of the species represented by SEQ ID NO:13, 14, 19, 20, 21, 22, and 23 in dependent Claims 13, 25, 30 or in any new claims as provided by 37 C.F.R. §1.141.

Within Group VII, Applicants make the species elections of ¹¹¹In as the representative isotope or nuclide, Gd as the representative paramagnetic metal, ¹²⁵I as the representative radiohalogen, and small cell lung carcinoma is the representative tumor or carcinoma.

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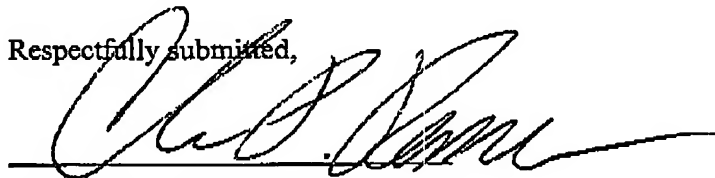
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CONCLUSION

Applicants believe that they have complied with the Examiner's restriction requirement. After the above election, Claims 12-14 and 27-31 are now currently pending in the present application. Applicants request entry of the foregoing amendment and remarks into the file of the above-captioned application. Applicants respectfully request that the present application proceed to prosecution on the merits.

It is not believed that extensions of time are required beyond those which may otherwise be provided for in documents accompanying this Response. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. §1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account 20-0823.

Respectfully submitted,



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Dated: January 13, 2006